

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 31ST DAY OF OCTOBER 2018 / 9TH KARTHIKA, 1940

WP (C) .No. 35527 of 2018

PETITIONER/S:

RINILRAJ RAJU,  
AGED 32 YEARS,  
S/O.RAJU, FLAT NO.2A LEXUS APARTMENT, MILLUMPADY,  
VADACODE P.O., (ERNAKULAM DISTRICT), KERALA,  
PIN-682021.

BY ADVS.  
SRI.JUSTINE JACOB  
SMT.A.P.BEELAMMA  
SMT.RESMI THOMAS  
SRI.K.S.ARUN KUMAR

RESPONDENT/S:

- 1 DEPARTMENT OF REGISTRATION,  
REPRESENTED BY ITS INSPECTOR GENERAL,  
O/O DEPARTMENT OF REGISTRATION, VANCHIYOOR P.O.,  
THIRUVANANTHAPURAM - 695035.
  
- 2 THE SUB REGISTRAR,  
SUB REGISTRAR OFFICE,  
OACHIRA,  
KOLLAM DIST., PIN - 690 533  
KERALA

BY SRI.SAIGI JACOB PALATTY, SR.GOV'T.PLEADER

OTHER PRESENT:

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
31.10.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

JUDGMENT

The petitioner seeks direction from this Court to ensure rendering of early decision on his request submitted as per Ext.P2 for correction of errors that have crept in Ext.P1 Marriage Certificate issued under Section 13 of the Special Marriage Act, 1954. The prayers in the above Writ Petition (Civil) are as follows:

- a) *Issue a writ of mandamus or any other writ, order or direction directing the respondents to allow Exhibit P2 application by correcting the name of petitioner in Exhibit P1 marriage certificate from 'RINIL RAJ.R' to 'RINILRAJ RAJU' in tune with the Exhibit P3 to P6 within the time limit framed by this Hon'ble Court.*
- b) *Issue such other writ, order or direction as this Honourable Court deems fit and proper to grant in the facts and circumstances of the case.*

2. Heard Sri.Justin Jacob, learned

counsel appearing for the petitioner and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

3. The petitioner's full name as shown in Ext.P4 statutory Birth Certificate, Ext.P3 Passport etc. is "RINILRAJ RAJU" and his father's name is "RAJU" as shown in Exts.P4, P3 etc. Solemnization of the marriage of the petitioner with "Jennifer Sandra Lurshay", was registered in accordance with the provisions contained in the Special Marriage Act and Ext.P1 Marriage Certificate was issued by the second respondent who is the Notified Marriage Registrar as per the Special Marriage Act. However, the name of the petitioner in Ext.P1 was shown as "RINIL RAJ.R" whereby the last alphabet 'R' stood for 'RAJU', which is his surname, based on his father's name. So also,

instead of showing the name of the petitioner as "RINILRAJ" as shown in Exts.P4 and P3, it is stated as "RINIL RAJ" in Ext.P1 certificate. As the petitioner's wife is employed in the United States of America, petitioner has to submit his papers before the Immigration Authorities of the Government of that Foreign Country, petitioner has now been advised that his name and other details shown in Ext.P1 Marriage Certificate should be the same as the entries in Ext.P4 statutory Birth Certificate and Ext.P3 Passport issued by the Government of India. In order to correct the said inadvertent mistake which has occurred in Ext.P1 Marriage Certificate, petitioner has submitted Ext.P2 application dated 22.10.2018 before the second respondent, who is the Notified Marriage Registrar as per the provisions contained in the Special Marriage

Act. Petitioner seeks early consideration and decision on Ext.P2 request made by him for correction in Ext.P1.

4. Section 49 of the Special Marriage Act, 1954 deals with correction and mistakes which provides as follows:

*"49. Correction of errors.- (1) Any Marriage Officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.*

*(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.*

*(3) Where a copy of any entry has already been sent under section 48 to the Registrar-General or other authority the Marriage Officer shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made."*

5. Sub-section (1) of Section 49 stipulates that the Marriage Officer is empowered to consider the corrections if he discovers any error in the form or substance of any entry, then, he may, within one month next after the discovery of such error, may take steps for the correction of the said erroneous entries as stipulated in the said provision. However, that does not mean that *suo motu* action could be the only basis for exercising the powers under Section 49(1). The errors in that regard could be discovered by the Notified Marriage Officer or his own or it could be pointed out by his Subordinate Officials concerned or it could be pointed out by the persons concerned, more particularly the parties to the marriage. Therefore, even in a case where the parties to the marriage of the petitioner points out the mistake, then, that

could be the statutory basis for triggering action at the hands of the second respondent Notified Marriage Registrar to take action for considering whether there has been any erroneous entries in Marriage Certificate and then to take necessary steps for correction. sub-section (1) of Section 49 also stipulates that the procedure for correction of such erroneous entries should be made in the presence of the persons married or in case of their death or absence, in the presence of two other credible witnesses etc. Sub-section (3) of Section 49 further envisages that the copy of the earlier entries in the Marriage Certificate has already been sent under Section 48 to the Registrar-General or any other authority, then, the Marriage Officer shall make and send in the like manner a separate certificate of the original erroneous entry and

of the marginal corrections made therein, to such authorities.

6. Section 48 of the Special Marriage Act provides as follows:

*"48. Transmission of copies of entries in marriage records.-Every Marriage Officer in a State shall send to Registrar-General of Births, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and, in the case of Marriage Officers outside the territories to which this Act extends, the true copy shall be sent to such authority as the Central Government may specify in this behalf."*

7. It is submitted by the petitioner that his wife is residing in United States of America and it is not practically feasible for her to come over to Kerala only for the purpose of taking action in relation to Ext.P2 application etc. In that regard, sub-section (1) of Section 49 itself permits taking of action for correction of erroneous entries even



in the absence of the parties, in the presence of two other credible witnesses. Accordingly, in case the petitioner's wife is not able to come over to Kerala, then it should be ensured that a declaration of the petitioner's wife signed by her may be submitted before the second respondent, stating that the petitioner's wife fully concurs with the plea made by the petitioner for correction of the entries in Ext.P1 Marriage Certificate as sought for in Ext.P2 application etc. Petitioner may also file a separate affidavit attested before a Notary Public stating as to how the erroneous entries in Ext.P1 Marriage Certificate have occurred and also the details as shown in Ext.P4 statutory Birth Certificate and Ext.P3 Passport etc. and any other documents. Attested copies of such documents may also be annexed along with the said

affidavit. So also it should be ensured by the petitioner that two other credible witnesses, preferably the parents of the petitioner or that of his wife or any other responsible relatives in their family should be present before the second respondent Marriage Registrar for effectuating action as envisaged in Section 49(1) of the Special Marriage Act.

8. Accordingly, it is ordered that the second respondent Notified Marriage Officer shall consider the request made in Ext.P2 application and to take necessary action on the request made by him for correction of the entries made in Ext.P1 Marriage Certificate, in accordance with the provisions contained in Section 49 of the Special Marriage Act, 1954, without much delay, preferably within a period of one month from the date of submission of the affidavit of the petitioner and the signed

declaration of his wife, as aforestated.

Needless to say, a reasonable opportunity should also be afforded before a decision is rendered by the second respondent, as afore stated.

With these observations and directions, the Writ Petition (Civil) will stand finally disposed of.

Sd/-

ALEXANDER THOMAS

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE MARRIAGE CERTIFICATE OF PETITIONER
EXHIBIT P2	TRUE COPY OF THE APPLICATION DTD. 22/10/2018
EXHIBIT P3	TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT OF THE PETITIONER
EXHIBIT P4	TRUE COPY OF THE BIRTH CERTIFICATE OF THE PETITIONER
EXHIBIT P5	TRUE COPY OF THE AADHAAR CARD OF THE PETITIONER
EXHIBIT P6	TRUE COPY OF THE ONE AND THE SAME CERTIFICATE ISSUED FROM VILLAGE OFFICE

RESPONDENTS' EXHIBITS:

NIL

//True Copy//

P.A. To Judge

Bb